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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,504	11/20/2001	Bruce E. Mann	07442-010002	2234
26161	7590	10/06/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			BADERMAN, SCOTT T	
			ART UNIT	PAPER NUMBER
			2113	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/989,504

Applicant(s)

MANN ET AL.

Examiner

Scott T Baderman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) *
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ *
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 17 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 4, respectively, of U.S. Patent No. 6,321,345. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 3 and 4 of the patent include all of the limitations in claims 17 and 18 of the instant application. With regard to the additional limitations in claims 3 and 4 of the patent, which are not included in claims 17 and 18 of the instant application, the omission of these limitations in claims 17 and 18 of the instant application is an obvious expedient since the remaining limitations in claims 3 and 4 of the patent perform the same function as the limitations in claims 17 and 18 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

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3. Claims 19, 20 and 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 7 and 8, respectively, of U.S. Patent No. 6,321,345. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 6, 7 and 8 of the patent includes all of the limitations in claims 19, 20 and 21 of the instant application. With regard to the additional limitations in claims 6, 7 and 8 of the patent, which are not included in claims 19, 20 and 21 of the instant application, the omission of these limitations in claims 19, 20 and 21 of the instant application is an obvious expedient since the remaining limitations in claims 6, 7 and 8 of the patent perform the same function as the limitations in claims 19, 20 and 21 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Windrem et al. (GB 2270791).

As in claim 17, Windrem discloses a redundant array of inexpensive disks comprising: a plurality of disks (Figure 1, element 12); a bus (data channels, Figure 1, element 19) coupled to

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the disks and adapted to transmit data blocks (video/audio data) from the disks to a receiving device (i.e., the device that receives the video/audio data) (Figure 1, p. 3, lines 13-20); and a reconstructor to reconstruct a data block of one of the disks with associated data and parity blocks from others of the disks and in response to determining that the one of the disks has not responded within a normal time interval (i.e., slowest disk implies that the disk has not responded within a normal time interval) for responding to a read request (p. 3: line 30 – p. 4: line 8, p. 9: lines 8-28, p. 18: line 13 – p. 19: line 7), wherein the reconstructor comprises a processor to send a signal to the reconstructor (i.e., a signal from a processor (control system) must initiate the automatic reconstruction process) in response to the one of the disks not responding within the normal time interval and with the reconstructor transmitting the reconstructed block to the receiving device in response to receiving the signal (p. 18: line 13 – p. 19: line 7).

As in claim 18, Windrem discloses wherein the processor is adapted to request the other of the disks to send associated data and parity blocks to the reconstructor in response to the one of the disks responding slowly (p. 18: line 13 – p. 19: line 7).

As in claim 19, Windrem discloses a method of transmitting data from a redundant array of inexpensive disks (RAID configuration) (Figure 1) that comprises requesting a first disk of the RAID configuration to transmit a first data block stored therein to a receiving device; and reconstructing the first data block from associated data stored in other disks of the RAID configuration with the reconstructing being performed in response to the first disk, but not

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completing a transmission of the first data block within a predetermined time (Figure 1, p. 3: line 13 – p. 4: line 8, p. 9: lines 8-28, p. 18: line 13 – p. 19: line 7).

As in claim 20, Windrem discloses wherein the associated data comprises at least one data block and a parity block from other disks in the RAID configuration (p. 3: line 30 – p. 4: line 8, p. 18: line 32 – p. 19: line 7).

As in claim 21, Windrem discloses wherein the reconstructing is performed in response to determining that the first disk is slowly responding (p. 18: line 13 – p. 19: line 7).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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7. Claims 17-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Baba et al. (5,758,057).

As in claim 17, Baba discloses a redundant array of inexpensive disks comprising: a plurality of disks coupled to the disks and adapted to transmit data blocks from the disks to a receiving device; and a reconstructor to reconstruct a data block of one of the disks with associated data and parity blocks from others of the disks and in response to determining that the one of the disks has not responded within a normal time interval for responding to a read request, wherein the reconstructor comprises a processor to send a signal to the reconstructor in response to the one of the disks not responding within the normal time interval and with the reconstructor transmitting the reconstructed block to the receiving device in response to receiving the signal (Figures 1 and 5, Abstract, column 1: lines 5-12, column 4: lines 16-33, column 5: line 61 – column 6: line 14, column 7: line 1 – column 8: line 57).

As in claim 18, Baba discloses wherein the processor is adapted to request the other of the disks to send associated data and parity blocks to the reconstructor in response to the one of the disks responding slowly (Figures 1 and 5, Abstract, column 1: lines 5-12, column 4: lines 16-33, column 5: line 61 – column 6: line 14, column 7: line 1 – column 8: line 57).

As in claim 19, Windrem discloses a method of transmitting data from a redundant array of inexpensive disks (RAID configuration) (Figure 1) that comprises requesting a first disk of the RAID configuration to transmit a first data block stored therein to a receiving device; and

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reconstructing the first data block from associated data stored in other disks of the RAID configuration with the reconstructing being performed in response to the first disk, but not completing a transmission of the first data block within a predetermined time (Figures 1 and 5, Abstract, column 1: lines 5-12, column 4: lines 16-33, column 5: line 61 – column 6: line 14, column 7: line 1 – column 8: line 57).

As in claim 20, Windrem discloses wherein the associated data comprises at least one data block and a parity block from other disks in the RAID configuration (Figures 1 and 5, Abstract, column 1: lines 5-12, column 4: lines 16-33, column 5: line 61 – column 6: line 14, column 7: line 1 – column 8: line 57).

As in claim 21, Windrem discloses wherein the reconstructing is performed in response to determining that the first disk is slowly responding (Figures 1 and 5, Abstract, column 1: lines 5-12, column 4: lines 16-33, column 5: line 61 – column 6: line 14, column 7: line 1 – column 8: line 57).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott T Baderman whose telephone number is (703) 305-4644. The examiner can normally be reached on Monday-Friday, 6:45 AM-4:15 PM, first Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott T Baderman
Primary Examiner
Art Unit 2113

STB